

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

COMMENTS OF COMPTTEL

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SUMMARY

In the Further Notice of Proposed Rulemaking (“FNPRM”), the Commission has teed up for comment a number of issues that were not resolved in the Report and Order released February 6, 2012 that adopted significant reforms in the Lifeline/Link Up universal service program. It also asks for comment on issues that purportedly were resolved in the Report and Order. For example, after eliminating reimbursement for non-recurring charges associated with activating voice service in the Report and Order, the Commission asks for comment in the FNPRM on whether the universal service fund should provide support for any non-recurring up-front charges associated with the provision of voice service. The surest way for the Commission to achieve its performance goals of ensuring the availability of voice and broadband service for low income Americans is to proceed with a consistent and coherent vision for the Lifeline fund, something that is not always apparent in the Report and Order.

COMPTTEL wholeheartedly supports the Commission’s proposal to establish an automated methodology for verifying consumer eligibility for Lifeline service at the time of application and on a continuing basis once service has commenced. Establishment of a national database administered by the Commission and/or USAC would be far preferable to relying on states to adopt eligibility databases or to provide access to eligibility data maintained by states in connection with their public assistance programs. Only a few states currently have databases that can be used to determine eligibility and the Commission has no authority to compel the rest of the states to establish such databases by 2013, its target date to have an automated means in place. Moreover, the Commission and USAC bear the responsibility for ensuring that universal service funds are properly collected and expended, that qualified low income consumers receive Lifeline discounts, that eligible telecommunications carriers (“ETCs”) are

properly reimbursed and for guarding against waste, fraud and abuse. It is only appropriate that the database developed to verify consumer eligibility be under the control of the entities that disburse the universal service funds.

The Commission should not divert universal service funds from their intended purpose of subsidizing telephone service for low income consumers to pay for digital literacy training. Not only does the Commission lack statutory authority to use universal service funds for digital literacy training, but there are also numerous publicly and privately funded entities already providing such training, including almost 88 percent of public libraries. The \$50 million per year that the Commission proposes to spend on digital literacy training could be used to provide subsidized telephone service to an additional 450,000 low income consumers.

All qualifying low income subscribers should be entitled to receive an equivalent amount of Lifeline support regardless of the identity of their ETC or the technology used to provide their voice service. A uniform flat rate of reimbursement, such as the one the Commission adopted on an interim basis in the Report and Order, should be maintained in the interest of simplifying administration and because it accurately reflects how many voice services are priced in today's market. To the extent the Commission determines to reset the reimbursement amount for voice service, it should not go below the \$9.25 for non-Tribal areas and \$34.25 for Tribal areas adopted in the Report and Order. These subsidy amounts are insufficient to produce universal telephone subscribership and should not be lowered. The Commission's own data show that as of July 2011, only 92 percent of households with incomes of less than \$10,000 per year had a telephone compared with 98.9 percent of households with incomes in excess of \$75,000. The Commission should not require ETCs to apply the Lifeline discount to bundled service offerings.

The Commission should not establish additional requirements for Lifeline only ETCs that do not meet the “own facilities” requirement under the Commission’s new definition of supported services nor should it identify a minimum combination of facilities that a carrier must own and use in order to qualify as facilities-based. Both states and ETCs, however, may find it helpful for the Commission to provide an illustrative (though not necessarily exhaustive) list of facilities, ownership and use of which in providing voice telephony would qualify a carrier as facilities based.

At this time, the Commission should not extend the time period for which ETCs must maintain records from three years to ten years. The Commission proposes to extend the record retention period to ten years to mirror the statute of limitations in the False Claims Act. Prior to taking such action and burdening ETCs with far more extensive record keeping requirements, the Commission should evaluate the impact that the more vigorous oversight and audit processes adopted in the Report and Order have had on cutting down on waste, fraud and abuse in the Lifeline program. If the processes work as intended, USAC and the Commission should be able to identify and remedy any waste, fraud or abuse issues at or near their inception, a far more effective way of safeguarding the universal service fund than relying on whistleblowers to bring such matters to the government’s attention under the False Claims Act. Whatever retention period the Commission settles on should run from the date of the documentation and not from the customer’s service start or end date.

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COMMENTS OF COMPTEL

COMPTEL, through undersigned counsel, hereby submits its comments in response to the Commission’s Further Notice of Proposed Rulemaking released in the above captioned proceedings on February 6, 2012.¹ The Commission seeks comment on a number of initiatives intended to make the Lifeline program more efficient and less susceptible to waste, fraud and abuse. It also seeks comment, however, on a number of issues that were purportedly already resolved in the *Lifeline Link Up Reform Order*. COMPTEL is in favor of the Commission’s efforts to implement badly needed improvements to the oversight and management of the Lifeline program but urges the Commission to do so with a coherent vision. Unfortunately, there is a lack of consistency in a number of the Commission’s proposals and these inconsistencies

¹ *In the Matter of Lifeline Link Up Reform and Modernization*, WC Docket No. 11-42, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (hereinafter “FNPRM”).

must be remedied if the Commission is to achieve its goals of ensuring the availability of voice and broadband service for low income Americans.²

I. Development of an Eligibility Database

COMPTEL wholeheartedly supports the Commission's decision to establish a comprehensive database no later than the end of 2013 that would allow eligible telecommunications carriers ("ETCs") to verify the eligibility of a consumer for the Lifeline program prior to activating service as well as to verify continuing eligibility after service has commenced.³ Such a database could be instrumental in identifying rule violations and eliminating payments for ineligible consumers in a far more timely manner than is the case today. The availability of such a database would also reduce the burden on consumers, ETCs and the Universal Service Administrative Company ("USAC") of proving, verifying, documenting and challenging eligibility determinations.

A. The Database Must Be National

The Commission asks for comment on whether a state-specific or national eligibility database approach would be more reliable or efficient and on ways to mitigate the potential cost to states if the Commission were to mandate the creation of Lifeline eligibility databases at the state level.⁴ A national database is the only workable option. The Commission and USAC are the stewards of the billions of dollars that carriers and telephone subscribers pay into the universal service fund every year and that USAC is tasked with distributing nationwide. It is the responsibility of the Commission and USAC to ensure that USF funds are appropriately

² Report and Order at ¶25.

³ FNPRM at ¶ 403.

⁴ FNPRM at ¶¶ 404-405.

expended, that all beneficiaries of USF funding are qualified to receive the funding and that all ETCs are compensated in compliance with the Commission's rules. A national database administered by the Commission and/or USAC would ensure that those responsible for distributing the universal service funds have oversight of the resource used to verify eligibility.

Moreover, only a few states currently have an automated means or process for ETCs or state administrators to determine low income consumer participation in at least some of the programs which qualify consumers for Lifeline support. The Commission identified nine such states, but correctly acknowledged that in those states, eligibility information is not uniformly made available to ETCs.⁵ Even if the Commission had authority to mandate the creation of Lifeline eligibility databases at the state level, which it does not, it is unrealistic to assume that the remaining 84 percent of the states and territories whose citizens receive Lifeline discounts could have operational databases in place by 2013. A national database, for which the Commission and USAC are ultimately accountable, is the only reliable and efficient means to ensure the availability of an automated process for verifying consumer eligibility for Lifeline assistance by 2013.

The Commission asks whether it has the legal authority to provide universal service fund support to states for the purpose of implementing their own eligibility databases.⁶ Under Section 254 of the Communications Act, 47 U.S.C. §254, as it presently reads, the answer is no. Section 254(e) plainly states that only ETCs shall be eligible to receive specific USF support and that a carrier that receives such support shall use it only for the provision, maintenance and upgrading of facilities and services for which the support is intended. Further, Section 254(f) provides that

⁵ Report and Order at ¶97 and fn. 265 and at ¶400.

⁶ FNPRM at ¶405.

states may adopt regulations to preserve and advance universal service, *but only to the extent that such regulations do not rely on or burden federal universal support mechanisms*. The payment of universal service dollars to states for the purpose of implementing their own eligibility databases or for any other purpose would directly conflict with these statutory mandates.

In an effort to encourage states to implement their own Lifeline eligibility databases, the Commission asks for comment on whether it should condition receipt of Lifeline funds on state implementation of an eligibility database or, alternatively, condition Lifeline support to a state's consumers on the state's ability to facilitate access to eligibility data.⁷ The Commission cites no statutory support, nor does there appear to be any, that would allow the Commission to withhold Lifeline support from consumers in a state because the state does not have a Lifeline eligibility database or provide access to eligibility data. The Commission's contention that "states must, as a condition of receiving federal funds for certain other federal programs, such as Medicaid, participate in national eligibility databases by transmitting beneficiary data to a national database,"⁸ is somewhat misleading. The federal government does not condition receipt of Medicaid beneficiary funds on a state's participation in a national eligibility database. Rather, it conditions receipt of federal matching funds for reimbursement of a *state's costs for the automated data systems to administer the Medicaid plan* on the state's having in operation a Medicaid eligibility database. There is a big difference. In the Medicaid situation, Congress enacted specific legislation that not only provided federal matching funds to offset the states' costs to create and maintain Medicaid administration databases, but also made receipt of those

⁷ FNPRM at ¶406.

⁸ FNPRM at ¶406.

matching funds contingent on the states' having operational eligibility databases.⁹ In contrast, Congress has neither authorized the payment of universal service funds to states, nor conditioned an otherwise eligible consumer's right to receive Lifeline benefits on his/her state's implementation of an eligibility database or provision of access to eligibility data.

Instead of trying to coerce states into establishing eligibility databases by threatening to withhold support for the low income consumers who are the intended beneficiaries of the program, which the Commission has no authority to do, it should focus on building a national eligibility database that can be overseen and managed by the entities responsible for distributing the universal service funds to the carriers that are providing discounts to low income consumers – the Commission and USAC. As the Commission noted, there are a number of “efforts currently underway within and across federal agencies to facilitate eligibility determinations and eliminate waste in government programs, some of which qualify consumers for Lifeline.”¹⁰ The Commission should take advantage of those efforts to the maximum extent possible and leverage the work that has already been done to verify eligibility for Lifeline.

One such effort is the Public Assistance Reporting Information System (“PARIS”) which is operated under the auspices of the Administration for Children and Families (“ACF”) of the Department of Health and Human Services. PARIS permits social security numbers of public assistance recipients to be matched against various federal and state benefit payment systems, including those of the Veterans Administration, Department of Defense, Office of Personnel Management and state public assistance agencies.¹¹ Matches can be run for at least three of the

⁹ See 42 U.S.C. §1396.

¹⁰ FNPRM at ¶¶402, 410.

¹¹ See http://www.acf.hhs.gov/programs/paris/about/chart_par.html.

public assistance programs that qualify consumers for Lifeline¹² – Medicaid, Food Stamps and Temporary Assistance For Needy Families.¹³ The Commission should explore with ACF the options for getting access to the PARIS match database whether through USAC or otherwise.

Although the Commission asks for public comment on how it could best partner with other relevant agencies to share the information housed in those agencies' databases,¹⁴ the Commission is in a far better position to answer that question than are private parties. The White House and the Office of Management and Budget have issued Executive Orders and memoranda to the heads of Executive Departments and Agencies, respectively, directing them to find solutions that allow data sharing to, among other things, reduce the risk of waste, fraud and abuse in public assistance programs.¹⁵ The Partnership Fund for Program Integrity Innovation is a program created to fund pilot programs to simplify and/or streamline the processes for application, eligibility determination and confirmation of continued eligibility in various federally funded, state administered assistance programs, including Food Stamps, Medicaid,

¹² See <http://www.acf.hhs.gov/programs/paris/about/index.html#history>

¹³ 47 C.F.R. §54.409(b).

¹⁴ FNPRM at ¶410.

¹⁵ See e.g., The White House, Executive Order 13520 – Reducing Improper Payments and eliminating Waste in Federal Programs (Nov. 23, 2009) (directing Secretary of the Treasury, Director of OMB, Department of Justice and program experts to make recommendations on actions designed to reduce improper payments by improving information sharing among agencies and programs, including, where applicable, State and local governments and other stakeholders, and address ways in which information sharing may improve eligibility verification), available at <http://www.whitehouse.gov/the-press-office/executive-order-reducing-improper-payments>; Executive Office of the President, Office of Management and Budget, Memorandum For the Heads of Executive Departments and Agencies, re: Sharing Data While Protecting Privacy (Nov. 3, 2010) (greater sharing of data can help the federal government serve the public with programs that reflect the highest degree of efficiency, coordination and accountability and lead to increased transparency, better service, and reduced risk of waste, fraud and abuse with respect to public programs), available at www.whitehouse.gov/sites/default/files/omb.

Temporary Assistance For Needy Families and Supplemental Security Income, participation in any of which would qualify a low income consumer for Lifeline service.¹⁶ With the Administration's emphasis on sharing information about eligibility and enrollment status across programs and levels of government in an effort to increase transparency and improve integrity, efficiency and service in the delivery of state and federal benefit programs, the Commission most certainly has resources it can tap that could provide a roadmap for getting access to the information in state and federal databases that could verify a low income consumer's eligibility for Lifeline service. COMPTTEL supports the Commission's proposal to initially focus on the three public assistance programs that qualify the most consumers for Lifeline – Medicaid, Food Stamps and Supplemental Security Income – and in so doing, take advantage of the work that has already been done by other federal agencies.¹⁷

B. Safeguarding Consumer Privacy

When implementing a National Eligibility Database, safeguarding consumers' privacy and sensitive information must be given the highest priority. Through its oversight and management functions, the Commission must ensure that a national database under the control of the Commission and USAC has appropriate security safeguards. To the extent that there are concerns that providing access to Lifeline eligibility information to third parties may violate state or federal privacy laws,¹⁸ those concerns can be alleviated by obtaining customer consent in

¹⁶ The Partnership has already funded a pilot program to determine the usefulness of data from state-administered assistance programs in verifying eligibility for the Earned Income Tax Credit and a National Accuracy Clearinghouse to test how facilitating access to program information across states for the Food Stamps Program and other programs could improve efficiency and reduce duplicate participation. See Partner4Solutions, available at <http://partner4solutions.gov/pilots>.

¹⁷ NPRM at ¶411.

¹⁸ FNPRM at ¶407.

advance. At the time low income consumers apply for Lifeline service, ETCs can obtain the customer's consent to allow the ETC or USAC, as appropriate, to access the information necessary to verify that the customer participates in one or more of the qualifying public assistance programs. The federal Privacy Act specifically addresses the use of computer matching programs that compare two or more automated systems of records or a system of records with non-federal records for the purpose of establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements, by applicants for and recipients or beneficiaries of federal benefit programs. 5 U.S.C. §552a(o). So long as the Commission and USAC comply with the statutory requirements, privacy issues should not pose a barrier to the establishment and use of a national eligibility database.

The Commission asks whether there are privacy concerns surrounding the transmission of a customer's full social security number to the national eligibility database. There are privacy concerns anytime an individual is asked to provide his/her full social security number and the Commission should explore all options before requiring low income consumers to provide their full social security numbers to establish Lifeline eligibility.

The Commission has just created a National Lifeline Accountability Database to eliminate duplicate enrollment in the Lifeline program.¹⁹ Pursuant to the Commission's new rules, ETC's are required to transmit to the database a consumer's full name, full residential address, date of birth and the last four digits of his social security number or Tribal identification number to determine whether the consumer is already receiving Lifeline service from the same or a different ETC.²⁰ If the last four digits of a consumer's social security number together with date of birth and the other identifying information required by Section 54.404(b)(6) are sufficient

¹⁹ Section 54.404 of the Commission's Rules.

²⁰ Section 54.404(b)(6) of the Commission's Rules.

to detect duplicative claims, why is that same information not sufficient to determine whether the consumer is a beneficiary of a federal or state public assistance program that would qualify him/her for Lifeline? Absent evidence that Lifeline eligibility determinations, unlike duplicate determinations, can only be made with the consumer's full social security number, the Commission should require that ETCs provide the same basic identifying information for both databases.

The Commission asks whether it could decline to provide Lifeline benefits to a consumer if the consumer refused to provide his full social security number.²¹ As the Commission appropriately recognizes, Section 7(a) of the Privacy Act, 5 U.S.C. §552a, prohibits federal, state and local government agencies from denying any right, benefit or privilege provided by law to any individual because of such individual's refusal to disclose his social security number. There is no question that the Lifeline subsidy is a federal benefit²² authorized by law.²³ Thus, it does not appear that the Commission could decline to provide Lifeline benefits to an otherwise eligible consumer simply because the consumer refused to provide his full social security number. Although the Privacy Act does not apply to private parties, such as ETCs, a Commission rule or directive requiring ETCs to transmit a consumer's full social security number to the eligibility database as a condition of receiving Lifeline support would appear to violate both the letter and the spirit of the Privacy Act. To the extent that the Commission does require ETCs to request a consumer's full social security number to verify eligibility for Lifeline, it must also require ETCs to inform the consumer (1) whether disclosure of the social security

²¹ FNPRM at ¶413.

²² The Commission describes Lifeline subsidized telephone service as a federal benefit. See Report and Order at ¶¶104, 115, 121, 274, 275 and Section 54.410(d)(1) of the Commission's rules.

²³ See Section 254 of the Communications Act and Part 54 of the Commission's rules.

number is mandatory or voluntary, (2) what statutory or other authority the Commission has to request the social security number and (3) that the information will be used to verify the consumer's eligibility for the Lifeline program. See Section 7(b) of the Privacy Act, 5 U.S.C. §552(a).

The Commission asks whether it should pursue other, non-electronic methods to verify eligibility in lieu of or in the interim while an electronic means of verifying eligibility is created. One example the Commission cites is having a national third party administrator examine income and program documentation submitted by consumers.²⁴ In theory, having a third party administrator make eligibility determinations pending the development of a national database might be advantageous for all concerned, but the Commission should focus its efforts on the implementation of a long term solution national database rather than expending resources on an interim "manual" solution. In no event should the Commission even consider adopting a manual document examination process by a third party administrator in lieu of establishing a national eligibility database.

Requiring a national third party administrator, such as USAC, to use a manual document examination process, even on an interim basis, would not be practical. The Commission makes no suggestions as to how it contemplates that the third party administrator would obtain the income and program documentation to examine. Would the third party administrator interact directly with consumers applying for Lifeline service and ask for the necessary documentation? Or would ETCs be required to obtain the necessary documentation from the consumer and forward it to the third party administrator? Or would the third party administrator request the necessary documentation from the state agency responsible for administering the program on

²⁴ FNPRM at ¶414.

which Lifeline eligibility is based? Or would the documentation be obtained in some other manner? It is impossible to offer meaningful comment on the Commission's non-electronic verification proposal without knowing how the Commission proposes to accomplish it.

II. USF Funds Should Not Diverted For Digital Literacy Training

The Commission has appropriately found that “voice service remains a prerequisite for full participation in our economy and society. Those consumers without affordable, quality voice services are at a disadvantage in accessing social and economic resources and opportunities.”²⁵ It has also appropriately found that “[i]f quality voice service is not affordable, low-income consumers may subscribe to voice service at the expense of other critical necessities, such as food and medicine, or may be unable to purchase sufficient voice service to obtain adequate access to critical employment, health care, or educational opportunities.”²⁶ Unfortunately, the Report and Order is rife with contradictions and the Commission appears to lack a coherent vision for the future of the Lifeline fund and the role the fund should play in ensuring that low income consumers have affordable access to voice telephony service.

For example, the Commission has acknowledged that the Lifeline eligible population has “increased significantly” over the past decade and that 46.2 million Americans were living in poverty in 2010 compared to 30.6 million in 2000.²⁷ At the same time, the Commission has expressed alarm about the “significant growth” in the low income fund even while conceding that the growth in Lifeline support has contributed to the increasing telephone penetration rate

²⁵ Report and Order at ¶17.

²⁶ *Id.*

²⁷ Report and Order at ¶23.

among households making less than \$10,000 per year.²⁸ The irony here is that if the Lifeline eligible population had increased significantly over the last decade, but Lifeline expenditures had not, the universal service fund would not have been serving its purpose of ensuring that consumers in all regions of the country, including low income consumers, have access to affordable telecommunications service.²⁹ Although it is critical that the Commission take all necessary actions to eliminate waste, fraud and abuse in USF expenditures and claims for support, growth in the Lifeline fund during the economic downturn that the country has experienced over the last four years should not be equated with waste, fraud or abuse.

As another example, the Commission eliminated Link Up reimbursement for all ETCs except high cost ETCs serving tribal areas after finding that such reimbursement created unhelpful incentives for carriers “to focus on obtaining new subscribers.”³⁰ The Commission’s suggestion that it is “unhelpful” for ETCs to focus on obtaining new subscribers is contrary to the plain language of the Act and the purpose of the Low Income fund. Section 214(e)(1)(B) of the Act *requires* ETCs to advertise the availability of Lifeline services using media of general distribution. Section 54.405(b) of the Commission’s rules likewise requires ETCs to publicize the availability of Lifeline service in a “manner reasonably designed to reach those likely to qualify for the service.” Moreover, as the Commission noted, the Joint Board on Universal Service urged the Commission in 2010 to adopt mandatory outreach requirements for all Lifeline ETCs because only 36 percent of eligible consumers participated in the Lifeline program in

²⁸ *Id.* As of July 2011, only 92.2 percent of households with incomes less than \$10,000 per year had a telephone compared with 98.9 percent of households with incomes in excess of \$75,000. Wireline Competition Bureau, Industry Analysis and Technology Division, Telephone Subscribership in the United States (Data Through July 2011) at Table 4 (Dec. 2011).

²⁹ See Section 254(b)(3) of the Act.

³⁰ Report and Order at ¶¶247, 252.

2009.³¹ The only conceivable purpose of advertising/publicizing the availability of Lifeline discounts is to encourage eligible consumers to subscribe to the service. It is impossible to reconcile the Commission’s articulated goal of the Lifeline program being to increase telephone service subscribership among low income households³² and its requirement that ETCs must publicize the availability of Lifeline service to those most likely to qualify with its statement that it is “unhelpful” for ETCs to focus on obtaining new Lifeline subscribers.

The mixed signals that the Commission is transmitting do little to promote its performance goals of ensuring the availability of voice and broadband service for low income Americans.³³ The Commission’s objective of restraining growth in Low Income spending³⁴ without regard to the percentage of eligible consumers who actually participate in the program is further exacerbated by its proposal to divert universal service funds from their intended purpose of subsidizing critical voice service for low income consumers to pay for digital literacy training.³⁵ COMPTTEL submits that using universal service funds to pay for digital literacy training would not only violate Section 254 of the Act, but it would also be beyond the general jurisdiction of the Commission. The Commission was created to execute and enforce the provisions of the Communications Act to regulate interstate and foreign commerce in communication by wire and radio so as to make available to all people of the United States a

³¹ Report and Order at ¶ 272.

³² Report and Order at n. 73.

³³ *Id.* at ¶25.

³⁴ The Commission estimates that its reforms will cause Lifeline program growth to start declining in 2012 and turn negative in 2013. By 2014, the Commission anticipates Lifeline disbursements to be at or below what they were in 2011. Report and Order at ¶357.

³⁵ FNPRM at ¶416 *et seq.*

rapid, efficient nationwide and worldwide wire and radio communications service with adequate facilities at reasonable charges.³⁶ Diverting universal service funds to pay for digital literacy training would do none of those things.

Section 254(c)(1) of the Act defines universal service as an evolving level of telecommunications service. Section 254(e) provides that only ETCs shall be eligible to receive universal service support and only for the provision, maintenance and upgrading of facilities and services for which the support is intended. Digital literacy training is neither a telecommunications service nor a telecommunications facility for which the statute authorizes the use of universal service funds.

To avoid running afoul of Section 254(c)(1)'s definition of universal service and limitation on the use of universal service funds, the Commission asks whether it could use E-rate funds to pay for digital literacy training at schools and libraries.³⁷ Section 254(c)(3) does authorize the Commission to designate "additional services" for universal service support for schools, libraries and health care providers for purposes of Subsection (h). Section 254(h)(2) provides that the Commission shall adopt competitively neutral rules to enhance access to advanced telecommunications and information services for schools and libraries to the extent economically reasonable. While the Fifth Circuit has deferred (reluctantly) to the Commission's interpretation that E-rate funding may be used for Internet access and internal connections provided by non-telecommunications carriers to schools and libraries,³⁸ it is highly doubtful that digital literacy training for low income consumers could be construed as "enhancing access" to

³⁶ 47 U.S.C. § 151.

³⁷ FNPRM at ¶¶422-423.

³⁸ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 441 (5th Cir. 1999) ("the best reading of the statute does not authorize the agency's actions").

advanced telecommunications and information services for schools and libraries. It is even more doubtful that diverting \$50 million of universal service funds per year³⁹ for digital literacy training, rather than using such funds for their intended purpose of subsidizing the cost of telecommunications services, could be construed as “economically reasonable.” This is especially so given that \$50 million per year could provide Lifeline service to more than 450,000 additional low income individuals.

According to the National Broadband Plan, the most frequently cited barrier to home broadband adoption is cost, not lack of digital literacy.⁴⁰ Lack of digital literacy was cited by only 22 percent of the non-adopters surveyed.⁴¹ These numbers confirm that using universal service funds for their intended purpose of making telecommunications services more affordable would be a far more efficacious way of increasing broadband penetration rates among low income households than diverting such funds for digital literacy training. It would also be more consistent with the National Broadband Plan’s recommendation that the Commission “expand Lifeline Assistance (Lifeline) and Link-Up America (Link-Up) to make broadband *more affordable* for low-income households” (emphasis added).⁴² Increasing digital literacy will not increase broadband adoption so long as the cost of broadband service remains out of reach of low income households.

³⁹ FNPRM at ¶434.

⁴⁰ National Broadband Plan, Chapter 9. Lack of access to affordable equipment, including computers, smart phones, air cards and modems also pose a significant barrier to broadband adoption among low income consumers. Report and Order at ¶349. Indeed, Cox estimates that approximately 70 percent of low income consumers in its markets do not have computers. *Id.* at n. 936.

⁴¹ National Broadband Plan, Chapter 9.

⁴² *Id.*, Recommendation 9.1.

There is no question that digital literacy training is a vital component of the quest to increase broadband adoption, but it is not an appropriate use of universal service funding. As the Commission has acknowledged, “Federal, state and local entities, along with their non-governmental partners, have provided significant funding to support hundreds of innovative broadband adoption programs.”⁴³ The National Telecommunications and Information Agency (“NTIA”) has awarded over \$450 million in grants for public computer center programs and sustainable broadband adoption projects. These programs were funded to provide computer and digital literacy training to facilitate greater use of broadband by the general public and vulnerable populations, including low income individuals.⁴⁴ NTIA has also launched a website dedicated to digital literacy that lists numerous courses in computer and Internet basics as well as educator tools for teaching digital literacy.⁴⁵ In addition to the Connect to Compete initiative cited by the Commission,⁴⁶ numerous other private entities offer digital literacy training.⁴⁷ The Commission

⁴³ FNPRM at n. 909.

⁴⁴ See NTIA, Broadband Technology Opportunities Report, Quarterly Program Status Report (December 2011) available at <http://www.ntia.doc.gov/report/2011/eleventh-quarterly-status-report-congress-regarding-btop>.

⁴⁵ See <http://www.digitalliteracy.gov/resources>.

⁴⁶ NPRM at ¶419.

⁴⁷ For example, Microsoft makes its technology skills curricula freely available to libraries to help them train staff and patrons in digital literacy skills. See <http://www.microsoft.com/about/corporatecitizenship/en-us/partnerships/bill-and-melinda-gates-foundation.aspx>. The Boys and Girls Club of America’s Club Tech teaches young people the essential digital literacy skills necessary to succeed in school and in the job market. <http://www.bgca.org/whatwedo/SpecializedPrograms/Pages/SpecializedPrograms.aspx>. One Economy offers technology training to underserved populations to teach participants how to navigate the Internet and promote broadband usage. <http://www.one-economy.com/increasing-internet-adoption-technology-training>. The Goodwill Community Foundation offers free online learning in computer basics, Internet basics, social media and other self-sufficiency skills. <http://www.gcflearnfree.org/about>. Comcast’s Internet Essentials program offers discounted Internet service and free training for families with children

cites no evidence or hard data for the proposition that these programs and others like them are insufficient or inadequate in teaching necessary digital literacy skills.⁴⁸ Nor does it cite any evidence that it could do a superior job of channeling funds for digital literacy training.

In an effort to justify using USF funds for digital literacy training, the Commission states that only 38 percent of public libraries offer formal digital literacy courses and only 25 percent of those in rural America offer such courses, citing an American Library Association Study.⁴⁹ What the study actually says is that the vast majority of public libraries (87.3 percent) report providing formal or informal technology training to library patrons, including formal classes, online tutorials, and point-of-use training to advance overall digital literacy, and only 12.7 percent of libraries nationwide offer no technology training.⁵⁰ The NTIA's digital literacy website also states that "[t]here are more than 16,600 public library locations around the United States – and nearly all of them offer no-fee public access to computers and the Internet, as well as trained staff to help you gain skills and connect you to online and print resources."⁵¹ The Commission offers no support for its apparent assumption that "formal digital literacy training"

receiving free lunches through the National School Lunch Program.
<http://www.internetessentials.com/>. The Digital Literacy Corps is an organization of student volunteers who work after school and on weekends to increase digital literacy. See <http://www.digitalliteracycorps.org>.

⁴⁸ See FNPRM at ¶427 ("Although some digital literacy training programs are already being offered, many Americans who haven't adopted broadband still *may* not have access to digital literacy training. . . ." (Emphasis added.))

⁴⁹ FNPRM at ¶¶420, 427.

⁵⁰ American Library Association, *Public Library Funding & Technology Access Study 2010-2011: Public Library Technology Study*, ("Library Tech study") at 24, 32, 33, 35 available at http://www.ala.org/ala/research/initiatives/plftas/2010_2011/plftas_11-techlandscape.pdf.

⁵¹ <http://www.digitalliteracy.gov/content/learner>.

is superior to informal training, online tutorials or point-of-use training⁵² in conveying the skills necessary to succeed in a digital economy.

The available literature demonstrates that Americans make good use of the computer and Internet facilities at their local libraries. According to a 2010 study funded by the Gates Foundation, 77 million, or 32 percent of Americans aged 14 or older, took advantage of computers and Internet access in a public library in the previous year. Forty-four (44) percent of people in households living below the federal poverty line took advantage of the computers and Internet access available at public libraries.⁵³ The Library Tech study cited by the Commission notes that 27.6 percent of libraries reported an *increase* in the use of their technology training services in the previous year. Moreover, it states that an estimated 300,000 people receive job seeking help at public libraries each day.⁵⁴ Reducing the cost barrier to broadband subscription would do far more to accelerate broadband adoption at home than funding digital literacy training that is already available to consumers through their local libraries and other sources.

Despite its lack of clear legal authority to spend universal service funds on digital literacy training, the Commission asks whether it should limit the distribution of funds diverted from the USF to entities or communities that do not already offer formal digital literacy training so as not to displace existing funding sources.⁵⁵ If the Commission were to do otherwise, it would not

⁵² FNPRM at ¶439.

⁵³ Opportunity For All: How the American Public Benefits From Internet Access At U.S. Libraries at 2, 32, available at <http://www.gatesfoundation.org/learning/Pages/us-libraries-report-opportunity-for-all.aspx>. Coincidentally, the Commission estimates that 32 percent of the American population has not adopted Internet at home. FNPRM at ¶416.

⁵⁴ Library Tech study at 1, 32.

⁵⁵ FNPRM at ¶430.

only be using universal service funds in a manner not authorized by the statute, it would also be throwing money away in a manner inconsistent with its fiduciary responsibilities as overseer of the USF. Where demand does not exceed whatever funding the Commission allocates for digital literacy, any excess should be retained by the USF and used for its intended purposes, rather than distributed to “existing programs or entities that have already received funding for digital literacy training.”⁵⁶

The Commission asks how it can fund digital literacy training without increasing the overall size of the universal service fund and suggests that it might do so by using any savings realized from the measures adopted to eliminate waste, fraud and abuse in the Lifeline program to pay for the training.⁵⁷ As the Commission has acknowledged, significantly less than 50 percent of eligible customers currently participate in the Lifeline program.⁵⁸ Any savings the Commission realizes from its reform measures should be used to provide discounts on telecommunications service to additional qualifying low income consumers or to minimize the contribution burden on all telephone ratepayers rather than to fund digital literacy training. Given the low participation rate in the Lifeline program, diverting funds for digital literacy training rather than using them to subsidize service for low income consumers would be antithetical to the Commission’s objective of fiscal responsibility in the use of universal service funds.

III. Lifeline Support Amount For Voice Service

In the Report and Order, the Commission replaced the Tier 1, Tier 2 and Tier 3 Lifeline reimbursement amounts on an interim basis with a uniform flat rate of \$9.25 for non-Tribal areas

⁵⁶ FNPRM at ¶432.

⁵⁷ FNPRM at ¶433.

and \$34.25 for Tribal areas to simplify administration of the program and to better reflect current marketplace realities.⁵⁹ The Commission asks for comment on whether to continue with a flat rate of reimbursement nationwide or tie the reimbursement amount to the price of the lowest priced available offering in a particular geographic area.⁶⁰ The request for comments on this issue is another example of the lack of coherency in the Commission’s vision for Lifeline. The Commission just amended Section 54.403(b) of its Rules to eliminate the language that required ETCs to apply the Lifeline support amount “to reduce their lowest tariffed (or otherwise generally available) residential rate for” voice services and replace it with language requiring that ETCs apply the Lifeline support amount “to reduce the cost of *any* generally available residential service plan or package” that provides voice telephony services (emphasis added). Unless the Commission plans to reverse course and undo its recent amendment to Section 54.403(b), it should maintain the flat rate of reimbursement nationwide and not tie the reimbursement amount to the price of the lowest available offering in a particular geographic area.

In today’s marketplace, all qualifying subscribers should be entitled to receive an equivalent amount of Lifeline support regardless of the identity of their ETC or the technology used to provide their service. As the Commission has previously determined, a uniform flat rate of reimbursement simplifies administration and accurately reflects how many voice services are priced in today’s market. For example, the service plans of wireless carriers are generally priced

⁵⁹ Report and Order at ¶54.

⁶⁰ FNPRM ¶463.

uniformly nationwide,⁶¹ as are the broadband/voice bundled offerings of wireline carriers.⁶²

Attempting to tie the reimbursement amount to the price of the “lowest priced available offering” in a particular geographic area would not only complicate unnecessarily the reimbursement process, it would be extremely difficult to administer. How would the Commission (or USAC) determine what the lowest priced available offering in a geographic area is and how often would those offerings be reviewed? Would the reimbursement be tied to the regular priced basic voice offering or to a reduced rate offered for promotional purposes? How would the Commission define the lowest priced available offering in light of its recent amendments to Section 54.401(b)? The revised rule provides that ETCs “may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan that includes voice telephony service, including bundled packages of voice and data services; and plans that include optional calling features such as, but not limited to, caller identification, call waiting, voicemail, and three-way calling.” ETCs may also permit consumers to apply the Lifeline discount to family shared calling plans. *Id.* Would the lowest priced available offering be for stand alone voice service only; or for voice plus the price of the broadband connection ; or for the lowest priced bundle of voice and data; or for the lowest priced voice plus optional calling

⁶¹ See *e.g.*, Verizon Nationwide Single Line Wireless Plans available at <http://www.verizonwireless.com/b2c/plans/?page=single>; AT&T Wireless Nationwide Individual Cell Phone Plans available at <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/individual-cell-phone-plans.jsp?requestid=20993>; T-Mobile Individual Cell Phone Plans available at <http://www.t-mobile.com/shop/plans/individual-plans.aspx>.

⁶² Verizon Fios Digital Voice Plans, available at <http://www22.verizon.com/home/phone/fiosdigitalvoice/overview/#plans> (last checked March 15, 2012); AT&T U-verse Phone Plans, available at <http://www.att.com/shop/u-verse/index.jsp#fbid=wuRaowCaW1d> (last checked March 15, 2012); Cox Cable Phone Plans, available at <http://ww2.cox.com/residential/northernvirginia/phone/phone-plans.cox> and <http://ww2.cox.com/residential/arizona/phone.cox> (last checked March 15, 2012); Comcast Xfinity Voice Plans, available at <http://www.comcast.com/Corporate/Learn/DigitalVoice/digitalvoice.html> (last checked March 15, 2012).

features package; or for the lowest priced bundle of voice and Internet; or for the lowest priced family calling plan? How would an ETC demonstrate to USAC what the lowest priced available offering was in each geographic area where it offers service? The difficulty in resolving these issues and in tracking the lowest priced offering in different geographical areas throughout the country weigh heavily in favor of the Commission maintaining a flat rate uniform reimbursement amount. The Commission should retain the flat rate national reimbursement amount on a going forward basis for the same reasons that it adopted it on an interim basis – ease of administration and eliminating the costs and burdens ETCs must assume in ascertaining rates charged by other carriers.⁶³

The Commission also asks whether it should provide support for any non-recurring up-front charges associated with the provision of voice service.⁶⁴ The Commission just eliminated Link Up support for non-recurring charges associated with the provision of Lifeline service on non-Tribal lands. Link Up support is still available on Tribal lands but only for ETCs that also receive high cost support.⁶⁵ The Commission's rationale for eliminating Link Up was that because some ETCs do not charge service activation fees when a new customer subscribes, no ETCs should be reimbursed for service activation fees because the customer can always get Lifeline service from a provider that does not charge a fee.⁶⁶ Moreover, the Commission determined that reimbursing ETCs for non-recurring charges associated with the activation of service was not in the public interest because it creates the unhelpful incentive for ETCs to sign

⁶³ Report and Order at ¶¶55-58.

⁶⁴ FNPRM at ¶ 463.

⁶⁵ Report and Order at ¶¶ 245-254; revised Rule 54.413.

⁶⁶ Report and Order at ¶¶246, 252.

up new customers.⁶⁷ As a result of these actions in the Report and Order, COMPTTEL is unsure whether the Commission is asking whether it should reinstate Link Up to cover “the administrative costs of opening an account,”⁶⁸ or whether it should authorize reimbursement for some other non-recurring charges that ETCs may incur when they activate service. In either event, COMPTTEL submits that non-recurring service activation fees designed to cover the costs of enrolling a new Lifeline subscriber should be reimbursable.

The Commission asks how it should determine the size of the support amount for voice service.⁶⁹ As one option, it suggests estimating low income consumers’ demand response to price as a means to estimate the appropriate subsidy levels.⁷⁰ The Commission has already acknowledged that states that provided higher monthly Lifeline subsidies per household exhibited greater growth in telephone subscribership from 1997 through the present.⁷¹ Such evidence of price sensitivity is not surprising given the need for low income consumers to stretch their limited incomes as far as possible.

Estimating low income consumer demand response to price would be a major undertaking. As the Commission has acknowledged, “low-income consumers may subscribe to voice service at the expense of other critical necessities, such as food and medicine,”⁷² so estimating price sensitivity cannot be done in a vacuum or by looking only at the effective

⁶⁷ Report and Order at ¶252.

⁶⁸ *In the Matter of MTS and WATS Market Structure*, 2 FCC Rcd 2324 (1987) at ¶68 and n. 115; *In the Matter of MTS and WATS Market Structure*, 2 FCC Rcd 2953 (1987) at ¶35.

⁶⁹ FNPRM at ¶464.

⁷⁰ FNPRM at ¶465.

⁷¹ Report and Order at ¶15.

⁷² Report and Order at ¶17.

household price paid by a low income consumer and the effective price received by an ETC or by comparing price and quantity as the Commission suggests.⁷³

Whatever methodology the Commission adopts to determine the appropriate support amount for voice service, in no event should the Commission consider reducing the reimbursement amounts below the existing \$9.25 for non-Tribal areas and \$34.25 for Tribal areas. These subsidy amounts clearly are not sufficient to produce universal telephone subscribership. According to the Commission's own data, as of July 2011, only 92 percent of households with incomes of less than \$10,000 per year had a telephone compared with 98.9 percent of households with incomes in excess of \$75,000.⁷⁴ To the extent that the Commission also seeks to promote universal broadband subscribership, the subsidy amounts will have to be increased to cover the additional cost of the broadband connection and Internet access.

Under no circumstances should the Commission establish different support amounts for fixed and mobile services. If it were to do so, it would improperly interfere with the operation of the marketplace and unduly influence or limit customer choice. As an example, if the Commission set a higher support amount for wireline than wireless service, low income consumers may feel compelled to choose wireline even though wireless would better suit their needs.

The Commission also asks whether support should be provided on a monthly basis to those ETCs that do not charge for service on a monthly basis.⁷⁵ It is unclear what the Commission is asking here. All ETCs that provide Lifeline service are entitled to receive

⁷³ FNPRM at ¶465.

⁷⁴ Wireline Competition Bureau, Industry Analysis and Technology Division, Telephone Subscribership in the United States (Data Through July 2011) at Table 4 (Dec. 2011).

⁷⁵ FNPRM at ¶468.

support and COMPTEL submits that there is absolutely no basis for treating prepaid carriers differently than postpaid carriers for purposes of Lifeline reimbursement. To the extent that prepaid and postpaid carriers both provide voice telephony service eligible for Lifeline support, the fact that one carrier charges its customers in advance for a set number of minutes and the other carrier bills its customers at the end of the month does not provide a basis for discriminatory treatment. The Commission has just concluded that requiring ETCs to charge Lifeline customers a minimum amount on a monthly basis would not serve the public interest because the Lifeline program “is serving the truly neediest of the population in the most dire economic circumstances . . . for whom even a routine charge is an excessive financial burden.”⁷⁶ That conclusion is consistent with the goal of the Lifeline program – to ensure that affordable voice telephony service is available to all Americans, including low income consumers. A decision to withdraw Lifeline support from low income consumers who choose ETCs who provide them a fixed number of minutes of service per month in exchange for the Lifeline reimbursement cannot be reconciled with the Commission’s prior determination that even a routine monthly charge is an excessive financial burden for the truly neediest in America.

At this point, the Commission should not even consider reducing the support amount for voice to the extent that “voice becomes an application that is available at no or minimal charge over a broadband connection.”⁷⁷ Today, none of the major wireline, cable or wireless carriers makes voice service available as an application at no or minimal charge over their broadband connections. Until that day comes and until a substantial majority of residential customers has

⁷⁶ Report and Order at ¶267.

⁷⁷ FNPRM at ¶473.

subscribed to a free voice service by operation of market choices,⁷⁸ Lifeline support for voice service should not be reduced or eliminated.

IV. Application of The Lifeline Discount to Bundled Service Offerings Should Not Be Mandatory

The Commission has already amended its rules to allow ETCs to apply Lifeline discounts to any residential service plan that includes voice telephony services, including bundled packages of voice and data, plans that include optional calling features and family shared calling plans.⁷⁹ There is no need for the Commission to further revise its rules to mandate that ETCs permit Lifeline subscribers to apply their discounts to any bundled service offering that includes voice. When it eliminated Link Up service, the Commission found that while many wireline and wireless carriers charge service activation fees, the market for Lifeline consumers appears to be competitive enough that a low income consumer could always get service from an ETC that does not charge a service activation fee.⁸⁰ The same rationale should apply here and the Commission should not require ETCs to offer Lifeline discounts on any bundled service that includes voice. To the extent that there is demand for a Lifeline discount on bundled service offerings, there is no reason to believe that ETCs will not respond to that demand and offer the discount without regulatory compunction.

V. Clarification of the “Own Facilities” Requirement

Section 214(e) of the Communications Act provides that an ETC must use either its own facilities or a combination of its own facilities and resale of another carrier’s services to provide the services supported by universal service funds. The Commission’s previous rule listed nine

⁷⁸ Compare Section 254(c)(1)(B) of the Act.

⁷⁹ Revised Section 54.401 of the Commission’s Rules.

⁸⁰ Report and Order at ¶¶246-250.

supported services, including operator and directory assistance services.⁸¹ When the Commission revised the definition of “voice telephony” service, it stated that a

Lifeline-only ETC does not meet the “own facilities” requirements of Section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported “voice telephony service” under amended rule 54.101, such as access to operator service or directory assistance.”⁸²

For over a decade prior to the rule change, carriers who provided access to operator and directory assistance services over their own facilities while providing the remaining supported services through resale were deemed facilities-based.⁸³ The Commission instructed carriers that had been designated as facilities-based ETCs by states under the Commission’s previous definition of supported services but who did not provide supported service over their own facilities under the revised definition to seek forbearance from the “own facilities” requirement.⁸⁴ In the subsequent Lifeline Report and Order, the Commission granted blanket forbearance from the “own facilities” requirement of Section 214 to all Lifeline-only ETCs with an approved compliance plan.⁸⁵ Now the Commission asks whether it should establish additional requirements for Lifeline only ETCs that do not meet the “own facilities” requirement under the

⁸¹ Previous rule 54.101(a).

⁸² *In the Matter of Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, FCC 11-189, at ¶4 (rel. Dec. 23, 2011).

⁸³ *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776, ¶169 (1997) (“[W]e conclude that a carrier could satisfy the facilities requirement [of Section 214(e)] by using its own facilities to provide access to operator services, while providing the remaining services designated for support through resale.”)

⁸⁴ *In the Matter of Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, FCC 11-189, at ¶4 (rel. Dec. 23, 2011).

⁸⁵ FNPRM at ¶496.

Commission's new definition of supported services,⁸⁶ whether it should specify the facilities a carrier must own and use to provide the supported services, and whether it should identify a minimum combination of facilities that a carrier must own and use in order to qualify as facilities-based.⁸⁷

The Commission does not articulate why it believes that additional requirements might be necessary for Lifeline-only ETCs that do not qualify as facilities-based under the Commission's revised rules or what those additional requirements might be. COMPTTEL submits that there is no need for the Commission to impose additional requirements on Lifeline-only ETCs beyond those already established in the Report and Order which include, among other things, the filing and approval of a compliance plan. There is no basis for assuming that ETCs who resell another carrier's service to low income customers are less likely to comply with the Commission's rules or more likely to contribute to waste, fraud and abuse than ETCs who own the network assets over which they provide Lifeline service.

The Commission should not identify a minimum combination of facilities that a carrier should own and use in order to be facilities-based. The Commission has previously correctly determined that Section 214 "does not dictate that a carrier use a specific level of its 'own facilities' in providing the services designated for universal service support."⁸⁸ With technology changing so rapidly, it would be unwise for the Commission to identify a minimum combination of facilities that a carrier must use in order to meet the facilities-based requirement. Any facilities included on such a list could become obsolete in just a few years.

⁸⁶ FNPRM at ¶497.

⁸⁷ FNPRM at ¶¶497, 499-500.

⁸⁸ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶169; see also ¶171 (Section "214(e) does not mandate the use of any particular level of a carrier's own facilities.")

There is no question that the amendment to the Commission's definition of supported services has caused some confusion with respect to whether carriers who provide voice telephony service at least partly through resale and have applications for ETC status pending before state commissions meet the facilities-based requirement. For this reason, it may be helpful for both ETCs and the state commissions if the Commission provided an illustrative (but not necessarily exhaustive) list of facilities, ownership and use of which in providing voice telephony would qualify a carrier as facilities-based. An ETC should also retain the right to argue that it meets the facilities-based requirement based on the ownership and use of any other facilities employed to provide voice telephony.

VI. Record Retention Requirements

Under the Commission's current rules, ETCs must maintain records to document compliance with federal and state Lifeline/Link Up rules for three full calendar years and customer eligibility certifications for as long as the ETC provides Lifeline service to that customer.⁸⁹ The Commission proposes to amend the rule to require ETCs (1) to retain Lifeline documentation, including subscriber-specific eligibility documentation, for ten years and (2) to retain customer eligibility documentation for as long as the ETC serves the customer even if that period extends beyond ten years.⁹⁰ The Commission wants to extend the record retention period in order to facilitate possible litigation under the False Claims Act.⁹¹

⁸⁹ Rule 54.417 prior to amendment.

⁹⁰ FNPRM at ¶506.

⁹¹ FNPRM at ¶¶ 505-506. A civil action under the False Claims Act may not be brought more than six years after the date on which the violation occurred or more than three years after the date when facts material to the right of action are known or reasonably should have been known to the government but in no event more than ten years after the date of the violation. 31 U.S.C. §3731(b).

The Commission's amended rules require ETCs to retain customer eligibility certifications and a significant amount of documentation demonstrating compliance with federal Lifeline rules.⁹² Requiring that ETCs retain this voluminous documentation for as long as the ETC serves the customer and for a minimum of ten years would be unduly burdensome and is unlikely to either improve compliance with the Commission's USF rules or to reduce waste and

⁹² See e.g., Section 54.405(c) (all materials describing the Lifeline service, including all print, audio, video, web materials, application forms and certification forms used to describe or enroll in Lifeline Service; Section 54.405(e) (written notifications to customers of impending terminations of service for lack of eligibility and proof of continued eligibility provided by customer, written notifications to customers for impending termination of service for non-usage, written notifications to customers regarding annual recertification of eligibility, written notifications of impending termination of service for failure to recertify eligibility, written notice to customers of impending service terminations for failing to provide annual one-per-household certifications, written notice to customers who rely on a temporary address of impending service terminations for failure to recertify that the address remains valid); 54.407(e) (records of the revenues the ETC forgoes in providing Lifeline service); 54.410(b)(1) (records of the data source an ETC used to determine a customer's income-based eligibility or the documentation provided by the customer; notice from a state Lifeline administrator or other state agency that the customer meets the income eligibility criteria; subscriber's certification that she/he meets the income-based eligibility criteria); 54.410(c) (customer certification of program-eligibility; records detailing the data source the ETC used to determine the customer's program-based eligibility or documentation customer provided to demonstrate program-based eligibility; notice from a state Lifeline administrator or other state agency that the customer meets the program-based eligibility criteria); 54.410(d) (copies of customer certification form provided by state Lifeline administrators or other state agencies); 54.410(f) (documentation of results of annual recertification reviews done by querying eligibility databases; customers' signed annual recertifications of continued eligibility; the results of annual recertification efforts undertaken by state Lifeline administrators or other state agencies); 54.410(g) (for customers who provide temporary addresses, ETCs' recertifications of customers' residential addresses every 90 days); 54.416(a) (ETCs' annual certifications that it has policies and procedures in place to ensure that Lifeline subscribers are eligible to receive service and what specific data sources are used to confirm eligibility, that ETC is in compliance with all federal Lifeline certification procedures, and that ETC has obtained a valid certification for each customer for whom the ETC seeks Lifeline reimbursement); 54.422 (detailed information on reportable outages; the number of complaints received in the prior year; certification of compliance with service quality standards and consumer protection rules; certification that the ETC is able to function in emergency situations; information describing terms and conditions of any voice telephony service plans offered to Lifeline subscribers or a link to a public website detailing terms and conditions of any such plans).

fraud and abuse in the Low Income program. Moreover, the national eligibility database will ensure that only eligible low income consumers receive Lifeline benefits.

The Commission has just strengthened significantly its oversight and audit requirements for the Low Income program

to ensure that there is a focused and effective system for identifying and deterring program abuse. The development of a uniform audit program, USAC audits of ETCs in their first year of providing Lifeline service, the requirement for biennial independent audits for larger ETCs, and stepped up enforcement will strengthen our existing low-income oversight process to reduce improper payments and mitigate the potential for program violations.⁹³

The Commission has also directed USAC to bolster its oversight process “to test the effectiveness of Lifeline ETCs’ internal controls and ensure that management is reporting accurately to USAC, the Commission, and state regulators, as appropriate” and “to test the accuracy of carrier certifications made pursuant to our new reporting requirements, the accuracy of the data included in the carriers’ Form 497, and the data input into the database by carriers.”⁹⁴ It has asserted that the new first year audit requirement “will aid efficient administration of the program by confirming early on that new ETCs are providing Lifeline service in accord with program requirements. ETCs will be made aware of any violations of the low-income requirements and prevent them from occurring on an ongoing basis.”⁹⁵ Similarly, the new biennial independent audit requirement for ETCs providing Lifeline service and drawing \$5 million or more from the fund annually will “focus on the company’s overall compliance

⁹³ Report and Order at ¶285.

⁹⁴ Report and Order at ¶287.

⁹⁵ Report and Order at ¶288.

program and internal controls regarding Commission requirements as implemented on a nationwide basis.”⁹⁶

Prior to adopting an overly burdensome 10 year record keeping requirement to parallel the outside deadline of the statute of limitations in the False Claims Act, the Commission should perform an evaluation of the impact its more vigorous oversight and audit processes have had on cutting down on waste, fraud and abuse in the Lifeline program. If the processes work as intended, USAC and the Commission should be able to identify and resolve any waste, fraud or abuse issues at or near the outset and well before ten years have passed.

The Commission should maintain the existing three year record retention period at least until it has an opportunity to determine whether its new processes and procedures are working as intended. At the very most, extending the record retention period to five years should be more than sufficient to accomplish the Commission’s purposes of protecting the USF and recovering any improper payments. Any record retention period that the Commission adopts should be for a fixed period of time and should not be tied to the customer’s service start or end date. Maintaining records for a specified period from the date of the records is more consistent with general corporate record retention policies and would be far easier to implement from an administrative perspective.

⁹⁶ Report and Order at ¶292.

Conclusion

For the foregoing reasons, COMPTTEL respectfully requests that the Commission resolve the issues raised in the Further Notice of Proposed Rulemaking in a manner consistent with the recommendations above.

Respectfully submitted,

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